IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.34034 of 2013

S.Udayakumar ...Petitioner

Versus

The State Rep.by.,
The Superintendent of Police,
Cuddalore,
Cuddalore District. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to impugned order passed by the respondent vide Letter No.D.O.165/2013 - C.No.D2/6992/2013 dated 01.03.2013 and quash the same and consequently direct the respondent to allow the respondent to revoke the suspension order and allow the consequential benefits.

For Petitioner : Mr.Alan David Rubus.S, Senior counsel
For Respondent : Mr.A.Rajaperumal, AGP

ORDER

The relief sought for in this writ petition is to quash the order of suspension issued by the respondent in proceedings dated 01.03.2013 and quash the same and for further direction to reinstate the petitioner in service.

2. The learned counsel appearing for the petitioner made a submission that the writ petitioner was holding the post of Special Sub.Inspector of Police and on account of certain allegation, trap case has been registered by the Department of Vigilance and Anti-Corruption on 28.02.2013 under Section 7 of Prevention of Corruption Act, 1988 in crime No.2 of 2013. The allegation against the writ petitioner is that he has received Rs.2000/-as bribe for releasing a car for inspection by the Motor Vehicle Inspector. The petitioner claims that the Trap is the motivated one and a false case has been registered.

3. May that it be, it is for the writ petitioner to participate both in the Departmental Disciplinary Proceedings

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as well as the Criminal trial and prove his innocence in accordance with law. This Court is not inclined to consider the merits and demerits of the allegation set out both in the criminal case as well as in the Departmental / Disciplinary Proceedings. It is left open to the writ petitioner to submit his explanation / objection in this regard to prove his innocence in the enquiry proceedings conducted by the competent authority.

4. However, this Court is of the opinion that keeping the employee under suspension for an unspecified period will cause financial loss to the State Exchequer also as the State is paying subsistence allowance of 50% of salary to the employees during the period suspension and sometimes the competent authorities are enhancing the subsistence allowance from 50% to 75% of his salary without performing any public duties. Such an attitude of the competent authority will certainly cause financial loss in respect of State Exchequer. Contrarily the writ petitioner shall be posted in any one of the non sensitive post by extracting work and salary shall be paid to him. In such circumstances during the pendency of the criminal case and the Departmental Disciplinary Proceedings, if the authorities competent is of the opinion that it will take some more time, then they are bound to consider the revocation of suspension and post the employee in any non sensitive post and extract work and pay salary. Thus, this Court is of the opinion that keeping the employee under suspension for an unspecified period will cause financial loss to the State. Even otherwise, the prolonged suspension is bad under law. It is necessary to clarify that once the disciplinary proceedings are initiated, the authorities competent are bound to dispose of the disciplinary proceedings as early as possible without causing undue delay in this regard. Further it is necessary to clarify that a mere pendency of the criminal case is not a bar to continue the department disciplinary proceedings. Even otherwise, during the pendency of the criminal case, the disciplinary authority shall continue the departmental disciplinary proceedings provided the records and the materials necessary to continue the disciplinary proceedings are available with the department. Further if the facts are complex in nature and authorities cannot continue the disciplinary proceedings during the pendency of the criminal case, then alone the authorities may take a decision to keep the disciplinary proceedings in abeyance and not otherwise. In all such cases where criminal case is registered against Government Servant, the competent authority shall proceed against them under Disciplinary and Appeal rules based on the materials, records and evidences available with the department. Thus even in the case on hand, it is left open to the disciplinary authority to proceed against the writ petitioner in accordance with the Discipline and Appeal rules.

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5. Even if some punishments are imposed under Discipline and Appeal rules and subsequently, if the criminal Court convicted the Government employee, then also there is a possibility of reviewing the earlier order of punishment under 36 & 37 of the Tamil Nadu Discipline and Appeal Rules. Even no time limit has been prescribed for the Government to review the orders of punishment issued by the Competent authority. However in respect of the head of department, the time limit of six months is prescribed for reviewing the order. Thus in all means, there is a possibility of reviewing the order of punishment even if the employee is convicted in the criminal case and when such powers are provided under the Discipline and Appeal Rules, it is not necessary that the competent authorities shall keep the disciplinary proceedings in abeyance for an indefinite period.

6. Under these circumstances, this court is of the opinion that the order of suspension deserves to be set aside in view of the fact that the writ petitioner is under continuous suspension for about 4 ½ years and receiving the subsistence allowance of 75% of salary from the year 2013. Accordingly, the writ petition stands allowed and the order of suspension issued by the respondent in letter No.G.O.165/2013-C.No.D2/6995/2013 dated 01.03.2013 is quashed and the respondent is directed to reinstate the petitioner and post him in any one of the non sensitive post during the pendency of the Criminal Case. No costs.

Sd/-
Assistant Registrar(CS VIII)

// True Copy//

Sub Assistant Registrar

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To

The Superintendent of Police,
Cuddalore,
Cuddalore District.

+1cc to Mr.V.Krishnamoorthy, Advocate SR.No.79709
+1cc to Government Pleader SR.No.80174

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